
OPINION OF THE PUBLIC ACCESS COUNSELOR

ERIC A. WELCH,
Complainant,

v.

MADISON CIRCUIT COURT,
Respondent.

Formal Complaint No.
18-FC-9

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging the Madison Circuit Court (“Court”) violated the Access to Public Records Act¹ (“APRA”). The Court has responded via the Hon. Judge Angela Warner Sims. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on January 22, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Eric A. Welch (“Complainant”), an inmate at Wabash Valley Correctional Facility, filed a formal complaint against the Madison County Circuit Court alleging the Court violated the state’s Access to Public Records Act (“APRA”) by failing to provide materials to supplement his petition for post-conviction relief.

Over the course of several years, the Complainant has sought court files for an identified Defendant. It is unclear how this relates to his petition for post-conviction relief, however, the operative document central to his complaint is a transcript of a minor’s deposition. It appears as if the remainder of the case file he seeks has been provided, at least in part.

The Court responded to the complaint by arguing the deposition in question was never entered into evidence and therefore not a public record maintained by the Court. Furthermore, even if the deposition were made part of the record, the Access to Public Records Act and Administrative Court Rule 9(G) would prohibit its release as confidential. Finally, the Court contends material sought in a post-conviction relief proceeding should be subject to that proceeding’s discovery rules.

ANALYSIS

APRA states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The Madison County Court is a public agency for the purposes of the APRA; and therefore, subject to its requirements. Ind. Code § 5-14-3-2(n). Thus, any person has the right to inspect and copy the Court’s disclosable public records during regular business hours unless the records are protected from disclosure as confidential or otherwise exempt under the APRA. Ind. Code § 5-14-3-3(a).

Typically this Office does not entertain complaints from inmates when they seek post-conviction relief. I have been adamant that whenever a discovery mechanism is available and the responding agency is a litigant (in this case, the State of Indiana), a litigant shall utilize the discovery process in lieu of an access to public records request. This includes post-conviction relief. Given that Courts have sovereign jurisdiction over all matters germane to the litigation before it, I defer to the judiciary to regulate access to discoverable materials held by the parties in a controversy. I only address it now as it has been some time since the issue has made its way into an opinion.

Pursuant to the Indiana Rules of Post-Conviction Remedies Section 5:

All rules and statutes applicable in civil proceedings **including pre-trial and discovery procedures** are available to the parties...The court may receive affidavits, depositions, oral testimony, or other evidence

and may at its discretion order the applicant brought before it for the hearing.

Emphasis added.

Because these remedies are available to the Complainant, this Office will not overstep its jurisdiction into matters regulated solely by the Courts.

In any case, the document sought by the Complainant does not appear to exist. Transcripts of proceedings do not have to be created upon request. While a transcript creation may or may not be ordered by judge, it is at the judge's discretion. This is usually only granted during the course of a proceeding and not after adjudication. Therefore, if a record does not exist, it does not have to be created upon request.

Furthermore, even if the transcript did exist, or if a recording of the deposition was in the custody of the Court, it would not need to be provided absent a court order. Administrative Court Rule 9(G) is clear that confidential records are excluded from public access. Rule 9(G)(2)(g) declares confidential the identification of witnesses and victims of sex crimes. The Access to Public Records Act also buttresses this argument at Ind. Code § 5-14-3-4(a)(1). Should a hearing officer in a post-conviction relief proceeding deem the recording and/or transcript relevant and discoverable and issue an order indicating as such, it may be released. Without such an order, the Court is justified in denying the Complainant's request.

CONCLUSION

Based on the foregoing, it is the Opinion of the Public Access Counselor that the Madison County Circuit Court has not violated the Access to Public Records Act.

A handwritten signature in black ink, appearing to read 'L. H. Britt', with a stylized flourish at the end.

Luke H. Britt
Public Access Counselor